

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ANITA KRECIC, #44712

PLAINTIFF

V.

CIVIL ACTION NO. 3:20-CV-210-KHJ-LGI

STEVE PICKETT, et al.

DEFENDANTS

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is the Report and Recommendation of United States Magistrate Judge LaKeysha Greer Isaac. [47]. That Report recommends that the Court grant Defendants Nehemiah Flowers, Pelicia Hall, Kathy Henry, Better Jones, Steve Pickett, and Butch Townsend's Motion for Summary Judgment [41]. Written objections to the Report were due by June 9, 2022. The Report notified the parties that failure to file written objections to the findings and recommendations by that date would bar further appeal in accordance with 28 U.S.C. § 636.

When no party has objected to a magistrate judge's report and recommendation, the Court need not review it de novo. 28 U.S.C. § 636(b)(1). In such cases, the Court can apply the clearly erroneous, abuse of discretion, and contrary to law standards of review. *See United States v. Brigham*, 569 F.3d 220, 228 (5th Cir. 2009) (citation omitted).

Plaintiff Anita Krecic sued Defendants in their individual and official capacities¹, alleging that the decision to deny her parole was based on unconstitutional retaliation, race and sex discrimination, and cruel and unusual punishment. *See* Compl. [1-1]. Defendants moved for summary judgment, asserting that Krecic's § 1983 claims are barred by *Heck v. Humphrey*, that Defendants are entitled to Eleventh Amendment immunity in their official capacities, and that Defendants are entitled to absolute quasi-judicial immunity in their individual capacities. Mot. for Summ. J. [41] at 2–3. The Magistrate Judge recommended that the Court grant the motion, finding that *Heck v. Humphrey* bars Krecic's § 1983 claims, and Defendants are entitled to Eleventh Amendment and absolute quasi-judicial immunity. [47] at 6–9. Krecic did not object to the Recommendation, and her time to do so has passed. The Court finds the Report and Recommendation is not clearly erroneous or contrary to law. The Court adopts the Report and Recommendation as the opinion of this Court.

As for the official capacity claims against Steve Pickett, Butch Townsend, Nehemiah Flowers, and Kathy Henry, they are no longer members of the Parole Board. Jeffery Belk, James Cooper, Betty Lou Jones, Anthony Smith, and Marlow Stewart are now the proper parties for the official capacity claims. Thus, pursuant to Fed. R. Civ. P. 25(d), Belk, Cooper, Jones, Smith, and Stewart are automatically substituted as Defendants in the place of Pickett and Flowers. *See* Fed. R. Civ. P. 25(d)(1) (“When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party...”).

Pelicia Hall is no longer the Commissioner of Mississippi Department of Corrections. On June 16, 2020, Nathan “Burl” Cain was confirmed by the Senate as the new Commissioner for MDOC. Pursuant to Fed. R. Civ. P. 25(d), Cain is automatically substituted as a Defendant in the place of Hall for the official capacity claim.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Report and Recommendation [47] of United States Magistrate Judge LaKeysha Greer Isaac, entered in this cause should be, and the same is, adopted as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that Defendants' Motion for Summary Judgment [41] is GRANTED, and this case is DISMISSED.

SO ORDERED AND ADJUDGED this the 17th day of June, 2022.

s/ Kristi H. Johnson
UNITED STATES DISTRICT JUDGE